

 <p style="text-align: center;"><b>Outdoor Dining Policy</b></p>	
Approved by	Council
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Responsible Officer	Manager Planning & Environment
Policies Related	Liquor License Management Policy
Applicable Legislation	Sections 222 to 225 of the Local Government Act 1999

## 1. Outdoor Dining Policy Statement

In general, council recognises the increasing popularity of outdoor dining and its contribution to increased social and cultural life, enhancing a sense of identity, vibrancy, security and relaxation, and its importance for economic prosperity of the Town.

Council supports and encourages the use of public footpaths and public spaces for business purposes, and may permit persons to alter, encroach upon a road within the framework provided by this policy.

Council is principally interested in encouraging and facilitating the use of the road verge areas in the Neighbourhood Centre for business purposes such as outdoor dining so as to create active *high streets*, particularly in respect of Walkerville Terrace. This policy assists Council to safely manage the competing needs and interests of pedestrians, road users and business owners by allowing outdoor dining in a manner that improves the usage, quality and image of the Town's public realm.

The purpose of this policy statement is to provide a framework for the issue and management of outdoor dining permits on public footpaths and other local government land within the Town of Walkerville.

## 2 Permits for Outdoor Dining Areas

The issue of outdoor dining permits (including leased areas) is conducted on a case by case basis and is at the discretion of the council after assessment of the following:

- Public safety
- Community benefit
- Impact on pedestrian and vehicular traffic
- Impact on street amenity, including character and heritage issues
- Adjoining land uses and likely impact of noise
- Accessibility issues and Disability Discrimination Act 1992 requirements

- Valid and adequate public liability insurance

### **3 Lodging an outdoor dining permit**

While applicants are encouraged to discuss their proposals with Council staff prior to lodgment, it should be noted that the following matters will be among those considered in the assessment of any such application:

- The location of the proposed dining area and its expected impact on the streetscape;
- The design, quality and maintenance of proposed furniture;
- The installation and maintenance of fixtures and fittings;
- The extent of enclosure and exclusive use proposed;
- The extent of pedestrian access and circulation spaces, with reference to the Disability Discrimination Act;
- Whether the applicant has adequate insurance;
- The strength of the relationship between the food preparation area and the proposed dining area;
- The provision of shade to protect patrons from the sun; and
- A general risk assessment (ie safety of patrons, pedestrians and motorists etc.)
- Separate application to the Commissioner of Liquor and Gaming is required in the event that alcohol is to be served in the designated outdoor dining area and the specified area is not licensed. Development approval must be granted before other details of applications for a Permit to erect an outdoor dining area can be assessed.
- All applications for a permit to establish an outdoor dining area which satisfy development requirements but which do not meet the other provisions in this policy, will be referred to the Council for consideration. All permits to establish outdoor dining areas shall, unless revoked, remain valid for 1 year, lapsing on 30th June.
- When determining the re-issue of an Outdoor dining permit, the delegated officer will have regard to any negative aspects of the applicant's current or past performance such as:
  - Continued disregard for any of the permit conditions;
  - Non-compliance with any planning consent conditions issued in respect of the activity; and
  - Whether there have been any on-going noise complaints.

An application form will need to be completed and application fee will be required to proceed with an assessment of the application. The schedule of current fees can be viewed at [www.walkerville.sa.gov.au](http://www.walkerville.sa.gov.au)

### **4 Outdoor dining criteria**

The following criteria will apply to any outdoor dining permit:

- Applicants should discuss their proposal with Council's Planning and Environment team in the first instance, when submitting an application to erect an outdoor dining facility on local government land.
- A separate application to the Commissioner of Liquor and Gambling is required in the event that alcohol is to be served in the designated outdoor dining area and the specified area is not currently licensed.
- A person to whom a permit to place an outdoor dining area has been issued shall clearly display it at the relevant premises for inspection by any appropriately delegated officer of the council upon demand by him/her, at any time during which the permit holder is trading pursuant to the permit. Permits are to include plans indicating the approved dining area, furniture and fittings, any shade provisions and must show a registered permit number.

- Any permit may be revoked by the council for breach of the permit conditions in accordance with Section 225 of the Local Government Act 1999.
- Permit Holders must apply for, and be granted an outdoor dining permit prior to setting up outdoor dining facilities on local government land within the Council area.
- The council may require the removal of outdoor dining facilities and the suspension of outdoor dining activities in a permit area, to enable infrastructure work to proceed on council land, or for any other purpose that the council deems warranted in the interests of public health and safety. When possible, the council will give reasonable notice to authorised businesses, where significant infrastructure works are to be undertaken. NO compensation will be provided for loss of business should Council need to access the location for infrastructure works.
- A permit to erect an outdoor dining area must operate in association with an approved restaurant, dining area or other premises, which provides meals and table service where the operator is responsible for serving to and clearing from tables in the outdoor area.
- Outdoor dining permit holders are required to hold public liability insurance that specifically indemnifies the Town of Walkerville, noting the Council as a “specified person” for the purposes of Section 48(1) of the Insurance Contracts Act 1984, to the value of twenty million dollars (\$20,000,000). A Certificate of Currency must accompany applications for, and renewal of, permits to erect an outdoor dining area.
- Meals are to be prepared in the adjacent building and not within the outdoor dining area, and cash registers are not to be used in outdoor dining permit areas. Further, the hours of operation of an approved outdoor dining area shall be the same as the hours of operation of the associated premises.
- Outdoor dining permit areas are subject to the requirements of the Public Health Act 2011, the Food Act 2001, and any other legislation governing health and hygiene in the associated premises.
- Music or other noise for the benefit of outdoor diners must not cause nuisance to any other neighbouring businesses, land owners, or to pedestrians and comply with the noise requirements of Environmental Protection Act at all times.
- The permit area can extend to include the area in front of another adjoining property provided that the owner of that property consents for this to occur. The adjoining property owner however, can withdraw his/her consent at any time by giving the permit owner 3 months’ notice in which case, the outdoor dining facilities shall be removed by the permit holder.
- Outdoor dining activities and all furniture, fixtures and other approved accessories must not extend beyond the boundaries of the Permit area.
- The desirable width of footpath area available for public pedestrian access adjacent to outdoor dining facilities, exclusive of safety setbacks and the dining area itself is 2.0 metres. The absolute minimum footpath width to be available for public pedestrian access is 1.8 metres. Public access and pedestrian flow (including for people using prams, wheelchairs etc.) must not be compromised.
- A-frame signs are not permitted within an outdoor dining area or within the pedestrian pathway adjacent to a permit area.
- Outdoor dining permits will be subject to such conditions (including the payment of an annual fee) as determined by the council and set out in the outdoor dining permit.
- Development approval must be granted prior to other permit application details being considered by Council. Council officers must ensure that a Risk Assessment has been completed prior to approving a permit application.
- Where a permit is granted, hours of operation for the approved outdoor dining area shall be the same as the hours of operation of the associated premises.
- The Chief Executive Officer or nominee may revoke a permit where a breach of the permit conditions in accordance with Section 225 of the Local Government Act 1999 has occurred.
- Council may require the removal (at the permit holder’s expense) of an outdoor dining facility or suspension of outdoor dining activities in a permit area to enable infrastructure work to proceed on

local government land, or for any other purpose warranted to be in the interests of public health and safety.

- In this instance, the Chief Executive Officer or nominee will endeavour to give reasonable notice to permit holders where possible.
- Street trees, seats, bins, paving and other Council fixtures are to be retained except with the express approval of the Chief Executive Officer or nominee. Removal, relocation or replacement of assets will only be approved where in the opinion of the Chief Executive Officer or nominee such action is justified, proposed changes will not impact utility services, and shall occur at the cost of the Permit Holder.
- Damage to public and private property within an outdoor dining area is the responsibility of the Permit Holder, who must supervise the area so that patrons' behaviour does not lead to damage. Any damage must be repaired at the Permit Holder's cost to the satisfaction of Council.
- Where fixed furniture has been installed and outdoor dining usage concludes, either through lapse / revocation of permit or conclusion of business usage, the Permit Holder must restore the footpath promptly to a condition equivalent to its state prior to furniture installation, at the Permit Holder's cost to the satisfaction of Council.

## **5 Fees**

Outdoor dining permit fees are listed in council's fees and charges schedule.

Where council is conducting an event requiring a temporary permit, fees may be waived with approval from the Chief Executive Officer (or nominee).

Additionally, applicants should note that development application fees will apply where relevant.

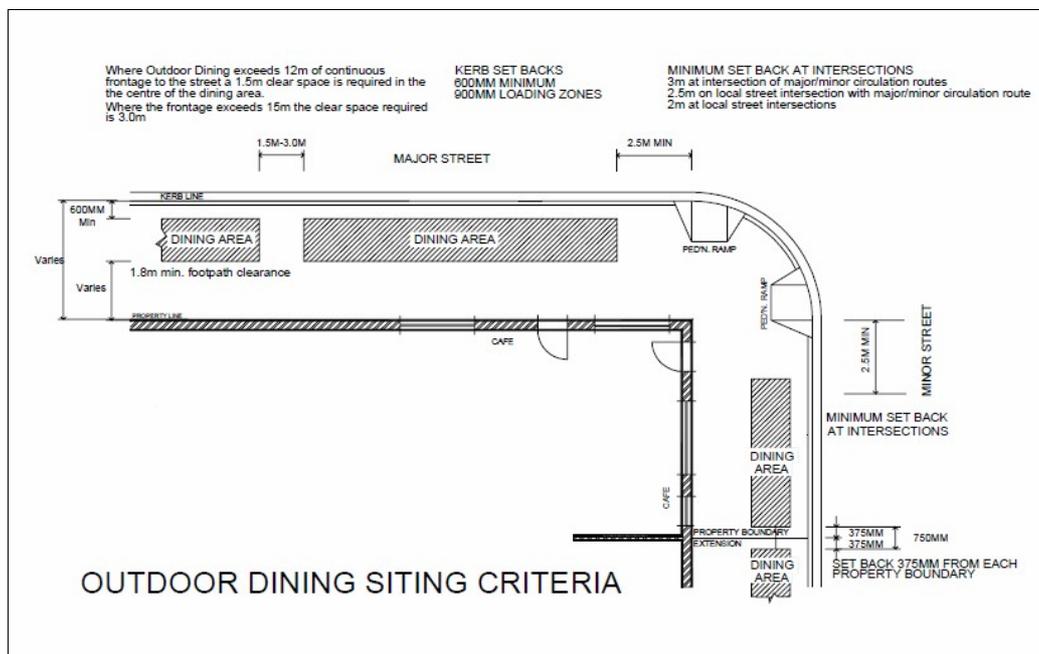
## **6 Outdoor Dining Design**

Outdoor dining areas must complement and enhance the existing streetscape character of the relevant precinct. The design, layout, furniture and accessories of outdoor dining areas must be in keeping with the key character elements of the precinct, including the colour scheme.

All additional features (e.g. plant boxes, umbrellas, heaters, coolers etc.) must be approved by the Council as part of the conditions of an outdoor dining permit; must be durable; and must be constructed and maintained at a high standard.

The establishment of accessories must be at the expense of the permit holder and should not require the relocation of any public street furniture, trees or services. Any alterations to public infrastructure that may be approved in special circumstances are to be at the cost of the applicant. In general, the construction of new protuberances to facilitate outdoor dining areas will not be considered via outdoor dining permit applications. Such requests should be submitted separately via the Assets & Infrastructure section of Council.

Typically, outdoor dining areas should be designed so as to comply with the following diagram:



## 7 Furniture and Accessories

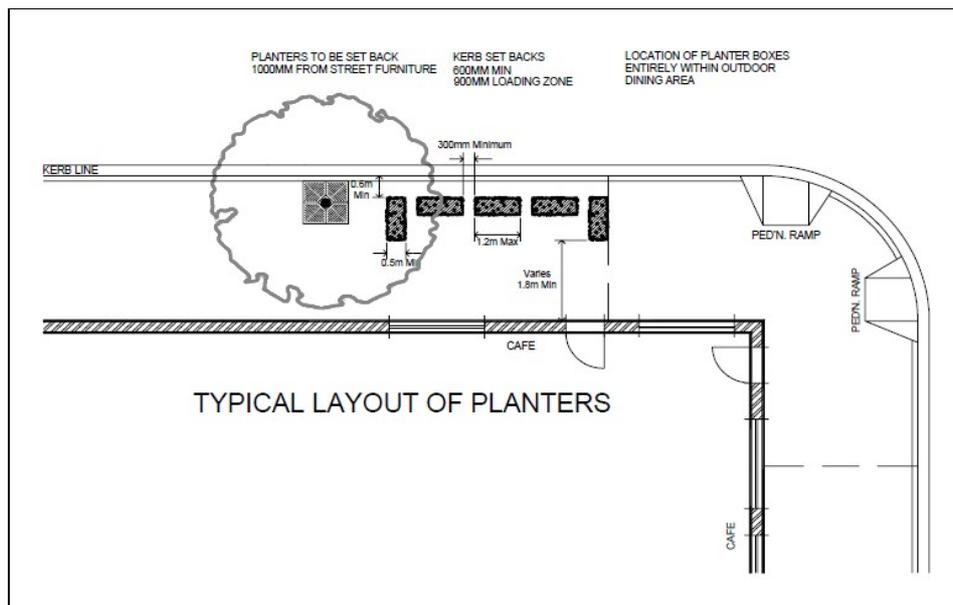
All furniture and accessories in outdoor dining areas are to be well designed, practical, durable, attractive and in keeping with the streetscape character. Fully extruded/moulded plastic furniture is not permitted as it does not withstand prolonged and intensive use.

The following provides guidance on what furniture and accessories will be considered acceptable within an outdoor dining area:

- Good quality outdoor furniture that includes some plastic elements is acceptable. The placement and style of furniture and all accessories are to be specified when applying for and issuing outdoor dining permit, and must comply with the following conditions:
  - All furniture is to be placed adjacent to the kerb side of the footpath, allowing a clear pathway along the building frontage;
  - The fixing, or otherwise, of tables is to be determined as part of the permit conditions on a case-by-case basis. Unfixed tables should be sturdy and stable to minimise the possibility of encroachment into safety and pedestrian zones and to prevent trip or other hazards;
  - Chairs and unfixed tables must be removed from the permit area at the close of business each day;
  - When fixed furniture is removed, the footpath must be promptly reinstated to a condition equivalent to that prior to installation, at the permit holder's cost; and
  - No furniture or accessories are to be placed on top of service covers or where they will interfere with existing services and access to them.
- Heating and cooling units may be installed with the permission of the council, and such units should be specifically designed for outdoor operation. All heating and cooling units must be operated by the permit holder or his/her staff and unit controls must not be accessible to patrons, must be well

maintained and serviced regularly, and must be located so as to avoid presenting a public safety risk to both patrons and pedestrians.

- Lighting of outdoor dining areas must be provided by the permit holder and must be adequate to ensure the safety of pedestrians and the amenity of the area outside daylight hours.
- “Chasing” and flashing lights are not permitted in outdoor dining areas.
- Enclosure of footpaths or other public spaces will not be permitted. Outdoor dining areas remain public spaces. Outdoor dining permit holders do not have exclusive use of the authorised area.
  - Individual planting boxes must:
    - Have a minimum width of 500mm and, if rectangular, a maximum length of 1200mm;
    - Not have pointed corners;
    - Be positioned to provide a minimum gap of 1m between them and other structures;
    - Not allow water and discharge to enter the storm water system, stain the pavement or create a hazard for pedestrians;
    - Be positioned at least 600mm on the dining area side of any crash barrier system/device;
    - Contain plant species suitable for the site, which are maintained in a healthy condition;
    - Not contain insert tubs which leave gaps permitting the build up of refuse in the plant box;
    - Be positioned to ensure that motorists’ sightlines are maintained in accordance with the relevant Australian Standards and AustRoads Standards; and
    - Be positioned in accordance with the diagram below:



## 8 Safety

Outdoor dining areas on footpaths must not impact on traffic safety. Motorists’ sightlines must be maintained in accordance with the relevant Australian Standards and AustRoads Standards. There is to be a safety zone of 900mm from the kerb to any structure, furniture, fixtures or fittings on a footpath where outdoor dining has been approved. Safety devices in the context of this Policy include barriers installed with the deliberate intention of preventing or attenuating the accidental entry of motor vehicles from the road carriageway onto the footpath.

The Council may require the applicant to install (at its own cost) safety devices. The Council may consider the requirement for the installation of safety devices in consultation and agreement with the Local

Government Mutual Liability Scheme. The installation of such devices will not obviate the need to provide all of the relevant clearances within the Safety, Diner and Pedestrian Zones.

## **9 Advertising**

One of the principles of outdoor dining is that it seeks to make a positive contribution to the streetscape and local amenity. The installation of advertising has the potential to detract from the visual attractiveness of the outdoor dining area. Signage to promote the name of the business may be appropriate in limited areas and can be considered by council in accordance with the Development Act 1993 where relevant.

Third party advertising (ie not related to the business) is generally not permitted in outdoor dining areas or on any items of furniture or equipment with the exception of on umbrellas and barriers. .

Details of any proposed signage and advertising including menus must be submitted to council as part of the application.

## **10 Shade**

Permit Holders should provide shade to protect patrons from the sun where there is no verandah or other canopy structure. Shade structures, including umbrellas must:

- Have a clearance of a minimum of 2.1 metres above the footpath level;
- Be secured against the effects of wind, and must be closed or removed during very windy conditions if not a permanent structure;
- Not have side curtains
- Be removed from the outdoor dining area when not in use and during all non-trading hours if not a permanent structure;
- Not include a stand or fitting which protrudes above footpath level, creating a hazard, when the shade structure or umbrella is removed;
- Be structurally sound and fixed to avoid personal injury and property damage;
- Have development approval (if required); and
- Be maintained in good condition at all times.

## **11 Maintenance and Cleanliness**

Outdoor dining permit holders are expected to maintain outdoor dining areas, including the footpath, in a clean, hygienic, tidy and safe condition at all times. This usually requires a constant presence as well as sweeping and spot mopping the area during trading hours to ensure that spillage of food and beverages does not cause staining, and that litter does not escape within or beyond the designated dining area.

If requested, the permit holder must provide a suitable waste receptacle within the dining area. Waste and sweepings must not enter the gutter and must be disposed of in the appropriate manner. Such refuse is not to be deposited in public litter bins.

Animals are to be managed effectively within outdoor dining areas, and dogs must be on a leash at all times.

Damage to public and private property within an approved outdoor dining area is the responsibility of the permit holder, who must supervise the area so that patrons' behaviour does not lead to damage. In the

event that damage does occur under the auspices of a lessee, the operator is responsible for notifying the owner of the property. Any damage must be repaired at the permit holder's cost.

## **12 Smoking**

Smoking is not permitted in outdoor dining areas. From 1 July 2016, smoking is banned in outdoor dining areas in South Australia under section 52 of the Tobacco Products Regulation Act 1997. This includes outdoor dining areas at venues such as pubs, cafes, restaurants, fast food outlets and temporary eateries at events.

The new law is designed to protect the community from exposure to potentially harmful tobacco smoke and increase the comfort and enjoyment of outdoor dining areas for all patrons.

Signs indicating the outdoor area is smoke free must be displayed in such numbers and positions of prominence that they are likely to be seen by people within the area.

## **13 Development Approval**

Outdoor dining areas of a significantly large scale may be considered 'change of use' of the footpath and are therefore subject to Development Approval. Some applications may include significant furniture installation, such as fixed screens, road safety elements such as bollards, enclosures, shade structures or signage. This may be assessed as building work under the Development Act 1993 and may also require a Development Application.

Development Approval cannot be granted for a building or structure proposed to be erected or installed on Council footpath, road or other land unless Council authorisation under the Local Government Act 1999 and/or relevant Council by-laws has been provided.

If Development Approval is required the applicant will be notified of the need to lodge a development application and advised on the process and requirements by Council. Applicants should be advised of the requirement for a Development Application, and any associated fees and timeframes for assessment, when preparing their outdoor dining application.

Additional fees and timelines apply.

Assessment of the development application will only commence once the outdoor dining application has been satisfactorily resolved.

## **14 Reissue of Permits**

Reissue of permits will have regard to any negative aspects of the applicant's current or past performance such as:

- Continued disregard for any of the permit conditions;
- Non-compliance with any planning consent conditions issued in respect of the activity;
- On-going noise complaints.

Where an outdoor dining facility meets performance requirements, the Chief Executive Officer or nominee will advise the Permit Holder of renewal notice needs at least one month before the renewal date and subject to payment within 30 days of receipt by the Permit Holder, the outdoor dining permit will be renewed.

## **15 Discretion**

Notwithstanding any provision or guideline outlined in this Policy against which Council will assess applications for outdoor dining areas, it is inherent in the provisions of the Local Government Act (1999) that Council has discretion to refuse applications notwithstanding circumstance on each and every occasion.

### Availability of Policy

This Policy will be available for inspection at the Council Office, 66 Walkerville Terrace, Gilberton during ordinary business hours and on Council's website [www.walkerville.sa.gov.au](http://www.walkerville.sa.gov.au). Copies will be provided to interested parties upon request for the payment as per Councils Fees & Charges listing.

### Review

This Policy will be reviewed every two years or otherwise as required.

Any queries or questions regarding this Policy should be directed to Manager Planning & Environment or by emailing [walkerville@walkerville.sa.gov.au](mailto:walkerville@walkerville.sa.gov.au)

NOTE: Council may deviate from this policy by way of Council resolution.